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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. MALIK NGUMEZI, Defendant and Appellant.	A146203 (City & County of San Francisco Super. Ct. No. 223573-01)

Defendant Malik Ngumezi appeals from a judgment convicting him of one count of shoplifting and sentencing him to time served in county jail. On appeal, he challenges the sufficiency of the evidence to support his conviction. We find no error and therefore, we shall affirm the judgment.

Background

On February 5, 2015, defendant was charged with second degree burglary (Pen. Code, § 459)[1] and participation in a criminal street gang (§ 186.22, subd. (b)(1)). A gang enhancement under section 186.22 was also alleged as to the burglary charge.

The gang charge and enhancement were bifurcated for trial. The following evidence was presented with respect to the burglary charge:

The store manager at the Sunglass Hut store in the Stonestown Mall testified that on January 5, 2015, at around 4:00 p.m., shortly after the security guard went on a break, defendant entered the store with two other men and a woman. The woman asked for the

[1] All statutory references are to the Penal Code.

Chanel sunglasses, and the manager pointed her towards them. The group split in two and headed towards different sections of the store.

The manager saw the woman take numerous pairs of sunglasses and put them in her purse. She also saw one of the other men take some sunglasses, but did not see whether defendant took any. When the manager saw the theft taking place, she walked towards the front of the store to lock the door. When the group noticed what she was attempting to do, they pushed past her and ran out the door.

The manager testified that she conducted an inventory of the store following the theft to determine the value of the stolen sun glasses. Initially, she testified that the value of the 14 pairs of missing sunglasses was $16,000. She immediately corrected her testimony, calculating the value of the missing glasses at $1,600, but then changed her testimony again, agreeing that the value was "closer to $5,000." She explained that the value of the individual glasses ranged from $120 to $900.

The manager authenticated videos from the store's security system. The surveillance video from the store was played for the jury. Defendant concedes that he can be seen on the video holding a pair of sunglasses while in the store.

On July 30, 2015, the jury found defendant not guilty of burglary, but guilty of the lesser included offense of shoplifting (§ 459.5). Following dismissal of the allegations under section 186.22, defendant was sentenced to time served of 184 days in county jail. Defendant timely filed a notice of appeal.

Discussion

Faced with a challenge to the sufficiency of evidence, this court must decide whether, viewing the evidence and inferences therefrom in a light favorable to the prosecution, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *People v. Staten* (2000) 24 Cal.4th 434, 460, 557, 576-578.) The evidence relied upon to meet this standard must be "reasonable in nature, credible and of solid value." (*People v. Frye* (1998) 18 Cal.4th 894, 1004.)

The jury was instructed that it could find defendant guilty of shoplifting either as a principal or as an aider and abettor. The jury was instructed pursuant to CALCRIM No. 1703 that "To prove that the defendant is guilty of [shoplifting], the People must prove that: [¶] 1. The defendant entered a commercial establishment; [¶] 2. When the defendant entered the commercial establishment, it was open during regular business hours; [¶] 3. When he entered the commercial establishment, he intended to commit theft; AND [¶] 4. The value of the property taken or intended to be taken was $950.00 or less. [¶] . . . [¶] A defendant does not need to have actually committed a theft as long as he entered with the intent to do so."[2] The jury was further instructed, pursuant to CALCRIM No. 401, that "To prove that the defendant is guilty of a crime based on aiding and abetting that crime, the People must prove that: [¶] 1. The perpetrator committed the crime; [¶] 2. The defendant knew that the perpetrator intended to commit the crime; [¶] 3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; AND [¶] 4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime. [¶] Someone *aids* and *abets* a crime if he or she knows of the perpetrator's unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime."

Here, substantial evidence establishes beyond a reasonable doubt that defendant committed the crime of shoplifting. The evidence set forth above amply supports a finding that defendant was part of the group that entered the store with the intent to steal sun glasses. The manager testified that she saw two of the four members of the group immediately start taking sunglasses and the video shows defendant handling a pair of glasses shortly before they all rushed out of the store. While the manager's testimony regarding the total value of the stolen glasses was admittedly unclear, she testified that

[2] The jury was instructed that shoplifting is a lesser-included offense of second degree burglary. The distinguishing element for purposes of this case is that second degree burglary requires that the value of the property taken or intended to be taken must be more than $950.

the individual value of a pair of glasses ranged from $120 to $900. This testimony undoubtedly accounted for the jury's acceptance of the shoplifting rather than the second degree burglary charge.

Disposition

The judgment is affirmed.

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Pollak, Acting P.J.

We concur:

_____
Siggins, J.

_____
Jenkins, J.